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could raise, while we sat on a surplus here. Now there's veritable footrace to see who can get to the Communist world with the "mostest firstest."

And how about us? We're no better. For dollars, and nothing but dollars, and without a single political concession or even an attempt to get one, we're almost in a frenzy to sell wheat to Russia (while righteously denying any to Red China and criticizing Britain for selling buses to Castro).

We're so anxious to take in the money that we'll apparently make any concession necessary. We uttered brave words at the time of the deal—to quiet our own citizens. The sale would have to be for cash on the barrelhead. Now we've retreated and let it be for credit. The grain had to be shipped in American bottoms. Well, maybe only half of it in American ships, we were presently saying. And when the Russians wouldn't agree to that, because American ships charge more, we simply paid the exporter an extra 14 cents per bushel, to relieve the Russians of the necessity. This was a quiet little deal in which the U.S. taxpayer footed the bill without even knowing it.

Meanwhile we shell out billions upon billions to contain communism. That's what much of our huge foreign aid expenditure is really for. Certainly it's what our enormous military expenditure is for.

We send Bobby Kennedy half way around the world to try to quiet Mr. Sukarno in Indonesia; we dispatch other trouble shooters to Africa and Central and South America; we have Adlai Stevenson make another wrist-slapping speech in the United Nations; we get contradictory reports from Secretary McNamara on how our war is going in Vietnam. The less said about it the better, apparently. Let's not look now. Maybe it will just go away.

Too bad about the 175 American boys, of course, but things like that can't be helped.

They can't? Well certainly they can't so long as we have no clear foreign policy versus communism, and so long as we lack the guts to enforce a policy even if our Government had one.

Isn't it about time the United States of America decided how to fight this cold war, then fought it?

### Suburbia: An Analysis

#### EXTENSION OF REMARKS

OF

HON. WAYNE L. HAYS

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 19, 1964

Mr. HAYS. Mr. Speaker, under the leave to extend my remarks in the Record, I include the following article from the Choate School News entitled "Suburbia: An Analysis," by Chris Meyer, a student at Choate. The article is a timely and interesting one, and I am pleased to enclose it at the request of our former colleague, the Honorable John A. McGuire.

#### SUBURBIA: AN ANALYSIS

(By Chris Meyer)

Within the last decade a new kind of community has emerged in the United States. Different from the homes of the country or the apartments in the cities, the dwellings of these towns are inhabited permanently, and yet the inhabitants are not there most of the time. The areas described, of course, are the suburban districts of the country. For every city there is a suburbia. Pittsburgh has its Sewickley. New York has its Greenwich. It

is nowadays in evidence, moreover, that these communities show the pulse of the upper class populous in the United States. When one examines the society of these villages, one sees many weak points that have affected the social structure of the entire country.

How does suburbia attack the family? What are its germ carriers? How does the germ infect its victim? It starts with the father wanting to work in the city but live in the country. This, of course, is almost entirely impossible if he wants to go home each night. So he settles for, instead of the farm he really envisions, a ranch house in a suburban area. Unfortunately, he finds that there are many other fathers who are doing exactly the same thing. They all have to commute to make a living. Thus the men of the community form a sort of informal fraternity, going to work on the 8:09 and coming home each night on the 5:05. Here the trouble begins. The fathers of the families, being in the city all day, are now greatly separated from the home. The children know him only vaguely, since they only see him 3 or 4 hours a day. The infants thus miss the paternal relationship which should prove so valuable to them in later years. The boys miss the firm, stable hands guiding them through life; the girls miss their conceived perfect man. As a result, the children as a whole become more unstable, and juvenile delinquency flourishes.

An even more hideous effect stems from the sustained marital relationship; the woman of the house becomes far more independent in her thinking. She finds things to do while hubby is at the office. She may get a job, for instance, in some store or organization. Moreover, due to the lack of time spent with her beloved spouse, her views begin to differ from those of her husband. These differences could only be resolved by constant companionship with her beloved one. As a result of arguments of this trivial nature, the husband and the wife get further and further away from each other and the divorce rate steadily climbs.

How, moreover, are the fathers affected? What happens to them while leading this hustle-bustle life of commuting? To start with, they become extremely rundown and tired. After a hard day, they have barely enough strength to climb into their beds. Through this lack of energy, they lose interest in everything except their work and sleep. They cease to read books—no time for that. They stop all hobbies. They play no sports and consequently become fat and out of shape. The men become sloppy and unclean. They find little time to do such insignificant chores as polishing their shoes, getting a good shave, or making sure their clothes are properly cleaned and pressed. They often go to work with egg still on their faces or spots on their ties. This, moreover, influences their children and they too become very messy, dirty and ill groomed, through no fault of their own.

The community itself also suffers in the hands of this sort of a person. The whole society revolves around a core of status-seeking businessmen. There is so much "trying to beat the Joneses" that it even affects the children. The kids are only allowed to play with certain people. Classes are formed and strictly obeyed, even to the extent of governing which part of town to settle in. Each small district forms its own social group and even its own area government in some cases. Everybody lives to talk about other people's faults and to spread false rumors behind their neighbors' backs.

How does this affect you? In most cases it affects you directly. Over 50 percent of the boys at Choate come from urban or suburban districts. How could it affect you, if you are not one of these areas? The United States is growing all the time. Small towns are growing into great cities. Perhaps your village is next on fate's list. How can you

stop this decline in society? If anyone knew, he would have the secret of utopia.

Each day into the great cities of the Nation—New York, Chicago, and Los Angeles—swarm thousands of suburban businessmen. Each day, at the hour of 5 or 6 in the afternoon, the same thousands of suburban businessmen swarm out of the cities to their homes in suburbia. Each day, the businessmen spend 1 to 3 hours transporting themselves to and from their offices in the cities. Each day, the suburbanite keeps the stock market moving through his investments. Each day, the suburban businessman acts as an agent for this investor. Each day, suburban businessmen run the various advertising agencies. Each day, suburban businessmen run this Nation.

### It's Time for a Change, Says Bob Wilson

#### EXTENSION OF REMARKS

OF

HON. FRED SCHWENGEL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 19, 1964

Mr. SCHWENGEL. Mr. Speaker, the gentleman from California, Congressman Bob Wilson, addressed a gathering at a Lincoln Day dinner in Penobscot County, Maine, and I wish to include in the Record an article in the Bangor (Maine) Daily News, of February 13, 1964, concerning the distinguished gentleman's talk:

#### SHOW OF GUTS ASKED BY CALIFORNIA CONGRESSMAN

(By Nelle Penley)

Lashing out at the Johnson administration Representative Bob Wilson, Republican, of California, declared Wednesday evening that "if there ever was a time for a change in our foreign policy and for an end to peaceful coexistence and those who are pushing it—it is now."

Wilson addressed more than 150 Republicans at a Lincoln Day dinner held at Pilots Grill under the sponsorship of the Penobscot County GOP Committee.

Citing the armed conflicts now going on in the world, Wilson said already all but 5 of the 36 independent African States have abandoned any pretense of democracy. "These," he declared, "are just a few of the current crop of coexistence bankruptcies." He also mentioned French President de Gaulle's recognition of Red China and the Cyprus, Cuba, and Panama crises.

He told the group that he mentioned this complete collapse of our foreign policy house of cards, because it has cost us, since we started to buy peace at any price, more than \$100 billion.

"We've tried to give and it hasn't worked. We've tried give in—it hasn't worked. Let's try give up all this expensive shilly-shallying and show some guts," the speaker urged pointing out that he felt this approach would work.

"Let's tell the world that Uncle Sam is through with catering to Communist capers—is through with being the live one for global beatniks—is going to give back with interest the shin kicks he's been getting and give them back in a much more vital place."

"Isn't that what every patriotic American wants?" he asked.

Speaking of the Great Emancipator, Wilson said the Republican Party has always been the party of freedom. When slavery became an issue, he said, there was no talk

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of peaceful coexistence with the slave States. Slavery to the Republicans was intolerable. We honestly believe that all men were created equal and should therefore live as equals with equal opportunity for all. The speaker said that today that is one of the planks in the Republican platform and always will be.

"If Lincoln were alive today, and saw our world of chaotic divisions and subdivisions—if he knew of the ultimate weapons we possess—he would be amazed at our blindness. He would cry out, I am sure, 'If a nation cannot so endure, how much less the world?'"

Wilson felt Lincoln would recognize coexistence as a stopgap measure and would never have believed in it as a permanent mode of international living. He would have recognized it for the stopgap measure that it is. He would have known that it was born of wishful thinking and—as a solution to our present world problems as phony as a three dollar bill.

The California Congressman warned his listeners, "Every day that we have dealings with the Communists and play along with them we are increasing their strength, building their resources for the inevitable showdown. We are playing a game of global poker today.

"Peaceful coexistence is just another word for appeasement and you know where that leads. It's peaceful coexistence Johnson style when he gave the Kremlin a credit card to purchase wheat for the Russians and when we signed the nuclear test ban," the speaker charged.

"We are practically at war with Russia. It may be labeled as the 'cold war' but the fact is that Red Russia's policy toward us has not been altered a single degree—Russia is waging war on us," asserted Wilson.

He paid high tribute to Representative CLIFFORD G. MCINTIRE, candidate for U.S. Senator in the coming campaign against Democratic Senator HUMPHREY S. MUSKIE, and who introduced him Wednesday evening.

Wilson termed McIntire "one of the finest men who has ever come down to Washington," pointing to his sincerity, honesty, and hard work.

Norman Minsky, of Bangor, presided at the meeting and the invocation was given by Dr. Frederick W. Whittaker. Both are members of the Maine Legislature.

*Cuba*

## The Quarantine of Cuba in International Law

### EXTENSION OF REMARKS OF

**HON. HUGH L. CAREY**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 19, 1964

Mr. CAREY. Mr. Speaker, the national commander in chief of the Veterans of Foreign Wars, Joseph J. Lombardo, of Brooklyn, N.Y., in a recent speech vigorously urged the establishment of a naval patrol between Red Cuba and the Panama Canal.

Explaining the VFW suggestion, Commander Lombardo said:

It is abundantly evident that Communist agitators were behind much of the tragic rioting against the U.S. zone in Panama. On the basis of the past record of Red subversion, it is merely realistic to expect that there will be more Red effort to embarrass, weaken, and dislodge the United States from control on our vital Panama Canal.

This is no spur-of-the-moment incident and the United States must take positive and effective measures for our own strategic safety. Therefore, our Government should immediately establish a naval patrol—a quarantine—between Castro's Cuba and the Panama Canal area. The purpose of this patrol would be to prevent the further export of Red subversion, weapons, and propaganda from Cuba to Panama and all Central America.

It should be remembered that there is much precedent from such a quarantine patrol. One was established by President Eisenhower during the Honduran crisis. Also, President Kennedy put elements of the 2d Fleet between Cuba and the Dominican Republic during the crisis resulting from the assassination of Trujillo. In both instances a purpose was to prevent Cuban-based Communists from exploiting the troubled areas. If such action was justified then, and it certainly was, then a similar naval patrol between Red Cuba and the Panama area is fully justified now. Such a patrol would in a real sense be a quarantine, preventing communism from further poisoning our relationship with our longtime friends in Central America.

Concluding, Commander Lombardo said:

We had better let our friends, as well as our enemies, know that we don't intend to be intimidated by the mobs, and we aren't going to knuckle under to arrogant demands to renegotiate our control of the Panama Canal Zone. If we ever agree to renegotiating our authority in the U.S. zone, then we will have triggered a chain reaction of disaster, and our base rights at Guantanamo Bay will be the next Communist target for negotiation.

Commander Lombardo's statement gains additional merit and force in view of the timely article by Dr. Edward D. Re, Chairman of the Foreign Claims Settlement Commission of the United States in the January Air Force Judge Advocate General's bulletin. Dr. Re is a professor of law at St. John's University School of Law and is currently on leave of absence. He received his B.S.—cum laude—and LL. B.—summa cum laude—degrees from St. John's University, his J.S.D. degree from New York University. He is vice chairman of the Section of International and Comparative Law of the American Bar Association. He is a member of the New York State bar, and holds the rank of lieutenant colonel in the Air Force Reserve—JAG—International Affairs Division—MOARS—OTJAG, Headquarters, USAF.

I would like to insert herewith in the CONGRESSIONAL RECORD Dr. Re's excellent analysis of the Cuba quarantine:

#### THE QUARANTINE OF CUBA IN INTERNATIONAL LAW

(By Edward D. Re)

"This urgent transformation of Cuba into an important strategic base—by the presence of these large, long-range, and clearly offensive weapons of sudden mass destruction—constitutes an explicit threat to the peace and security of all the Americas in flagrant and deliberate defiance of the Rio Pact of 1947, the traditions of this Nation and hemisphere, the joint resolution of the 17th Congress, the Charter of the United Nations, and my own public warnings to the Soviets.

"Neither the United States of America nor the world community of nations can tolerate deliberate deception and offensive threats on the part of any nation, large or small.

We no longer live in a world where only the actual firing of weapons represents a sufficient challenge to a nation's security to constitute maximum peril. Nuclear weapons are so destructive and ballistic missiles are so swift that any substantially increased possibility of their use or any sudden change in their deployment may well be regarded as a definite threat to peace.

"The 1930's taught us a clear lesson: Aggressive conduct, if allowed to grow unchecked and unchallenged, ultimately leads to war. This Nation is opposed to war. We are also true to our word.

"In the defense of our own security and of the entire Western Hemisphere, and under the authority entrusted to me by the Constitution as endorsed by the resolution of Congress, I have directed that the following initial steps be taken immediately:

"First. To halt this offensive buildup, a strict quarantine on all offensive military equipment under shipment to Cuba is being initiated. All ships of any kind bound for Cuba from whatever nation or port will, if found to contain cargoes of offensive weapons, be turned back. This quarantine will be extended, if needed, to other types of cargo and carriers.

"Our goal is not the victory of might but the vindication of right—not peace at the expense of freedom, but both peace and freedom, here in this hemisphere and, we hope, around the world."

#### I. INTRODUCTION

In these stirring words, on October 22, 1962, President John F. Kennedy announced to the world the U.S. quarantine of Cuba. With an already assured place in history, the President of the United States, on that historic day, thus revealed to a world explosive with tension and fear, a new device of the international legal order. Specifically aimed against Cuba's definite threat to the peace, and with a clear realization of the dreadful risks, the United States embarked upon a quarantine of Cuba.

In assessing the peril-infested times that preceded and followed the President's historic decision, future historians may well agree that the quarantine of Cuba was the most significant single event of this era. Fully cognizant of the speed and destructive force of nuclear weapons, that decision, by reaffirming a free nation's love of freedom more than peace, thereby preserved both peace and freedom.

Indeed, much will be written concerning the momentous decision of that fateful day. Historians, however objective, will emphasize certain aspects of the event from the viewpoint of their particular interest. Whether viewed politically, philosophically or militarily, all authors will have a great deal to record for future generations.

To the lawyer, whose professional discipline instinctively causes him to question the legality of all human action, the foremost question will concern the legal basis of the quarantine. Indeed, it is a tribute to the lawyer that he will permit his thoughts to focus upon the lawfulness of the action—even though his very survival might have been in the balance.

There is no doubt that much will be written about the quarantine of Cuba. Many phases of this emerging literature are already apparent to the legal scholar. For the international lawyer, the questions will be very specific and sharply defined. What are the provisions of the Inter-American Treaty of Reciprocal Assistance of 1947—the Rio Pact—that authorized the announced action? Are there provisions in the Charter of the United Nations that have a bearing upon the legality of that decision? Did there exist generally accepted principles of international law pertaining to a quarantine of Cuba? What are the traditions of this Nation and hemisphere, and on what promulgations are they based?

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Presumably, at some point the discussion must come to grips with the basic question whether the concepts of international law, particularly those surrounding 19th century naval warfare, are adequate to cope with the problems ushered in by the nuclear age. Since the action against Cuba was a quarantine, the lawyer inevitably must anticipate the question "How does a quarantine differ from a blockade?"

Even the most cursory answer would have to commence with the concepts of international law that deal with those acts of a nation termed "acts short of war." The layman will now learn that the blockade is only one of these acts and that the term itself refers to two different actions, depending upon whether it is a belligerent or a pacific blockade. Soon, in a genuine attempt to enlighten, the international lawyer will find himself explaining not only the legal aspects of blockade, but also other more or less related notions such as embargo, interdiction, intervention, reprisal and retorsion. These terms, although well known to the international lawyer and therefore capable of definition, assume new meaning depending upon time, place, and surrounding circumstances. Such, the layman will be told, is the flexibility and adaptability of the law. Still, the question will persist, "Why a quarantine?" and how does it differ from these other notions "well known to the international lawyer"?

## II. LEGALITY IN INTERNATIONAL LAW

It may be appropriate at the outset to note certain jurisprudential difficulties that exist in defining the notion of legality in the international sense. The difficulty goes to the very roots of international law. Austinian jurists often observe that there is no such thing as international law in the strict legal sense and that the concept of legality, therefore, is largely meaningless. On the other hand, the international lawyer may point to a host of principles that actually exist, and are in fact observed by the community of nations. Whether this observance or compliance is ultimately founded upon mutual or unilateral self-interest, the effectiveness of various international sanctions, or the dictates of necessity, poses interesting jurisprudential questions. Clearly the legality of an act in the international legal sense must be ultimately concerned with the aims of international law itself. These aims or purposes may range from the fostering of peace and the advancement of human civilization to simple self-preservation. It is this unsettled atmosphere surrounding the basic aims of international law that beclouds the legality of international acts such as the quarantine of Cuba.

Not only the international lawyer, but diplomats and those concerned with foreign policy may wish to make additional inquiries. Does the act offend the international conscience? Does it further world peace and order? Is it reasonable in conception and in execution? Are there analogous precedents in international law?

The student also knows of other relevant aspects of international law. For example, under the traditional international law of reprisals, some acts admittedly illegal may, under certain circumstances, become legal or justifiable. Other acts which are normally considered unlawful in time of peace may be lawful in time of war. And international law has finally begun seriously to question the legality of war itself.

Nevertheless, the legality of the Cuban quarantine may be examined in light of the two chief sources of international law. The first is customary international law, which may be found in the custom and usage of countries. This source is "based upon the common consent of nations extending over a period of time of sufficient duration to

cause it to become crystallized into a rule of conduct."<sup>1</sup> The second is conventional international law, which consists of treaties, pronouncements of foreign offices, statements by writers, and decisions of certain national and international tribunals.<sup>2</sup>

## III. THE QUARANTINE UNDER CUSTOMARY INTERNATIONAL LAW

### (a) History of the term

The quarantine of Cuba has been referred to by several titles. Although many have described it as a "limited naval blockade," the U.S. proclamation was actually entitled "Interdiction of the Delivery of Offensive Weapons to Cuba."<sup>3</sup> The term "quarantine," even apart from its common meanings in medical and legal practice, has had a long history in maritime law. It originally meant a period of 40 days, during which a ship arriving in port, and suspected of being infected with a malignant or contagious disease, was obliged to forbear all intercourse with the shore. The word is still used in a wider sense to indicate any forced stoppage of travel, communication, or intercourse, due to contagion or infections—including the spreading of plant and animal pests on land or by sea. Although the imposition of a traditional quarantine was indeed a forceful and unfriendly display of power, it has been universally regarded as a peaceful act of self-preservation.

Apart from the obvious analogy to the spread of disease, President Kennedy's choice of this term to describe the Cuban blockade may be regarded as extremely significant. Rather than utilize the warlike language of blockade, the President indicated, from the very beginning, an intent to characterize the act as essentially peaceful.

### (b) Acts short of war

Referring solely to the limited naval blockade of Cuba, the quarantine may be included in the series of measures in that area of international law entitled "Acts Short of War." These acts may range from minor international insults, such as placing a lesser official in charge of a consulate, to substantially warlike acts short of formally-declared war itself. International law has sought to categorize and define these acts short of war by listing them in order of their severity and by defining their respective elements. The spectrum includes such actions as the imposition of higher tariffs, restrictions on currency, the sequestration of foreign property, the severing of diplomatic relations and other acts of international harassment. The cold war of this decade has added several measures to the list: jamming of radio broadcasts, propaganda barrages, denunciations before various international organizations, and the recognition of competitive governments, to mention but a few.

It has been indicated that certain acts short of war, although unlawful in time of peace, may be lawful in time of war. It has also been said of these retaliatory measures that they "have come about by the absence of law-enforcing machinery in international law. Thus, a method has been developed that is not war and yet is intended to redress wrongs committed by another state forcefully and summarily."<sup>4</sup>

### (c) Retaliation, retorsion, and reprisal

The terms "retaliation," "retorsion," and "reprisal" are generally used loosely and interchangeably to describe these acts short of war. Retaliation, the most general term, is not a technical concept and does not have a well-defined meaning. Retorsion is used to define those acts that are legal but deliberately unkind and discourteous which are taken to redress prior acts likewise legal but also unkind and discourteous. Increases of tariff rates are a familiar example.

Footnotes at end of speech.

Reprisals, on the other hand, are usually defined as injurious and otherwise internationally illegal acts of one state that are permitted as measures of redress against another state for its own international delinquency. These may take a great variety of forms.

Traditional international law has recognized three conditions which would justify a reprisal. First, the reprisal must be preceded by an act contrary to international law. Second, it must be preceded by an unsatisfied demand for redress. Finally, the reprisal must be commensurate with or proportionate to the illegal act committed.

The distinction between retorsion and reprisal is often vague and ill-drawn. Historically, there has existed some element of force and seizure in reprisals, the concept apparently having originated from the "letters of marque and reprisal" issued to private persons to enable them to avenge a wrong or secure a remedy.<sup>5</sup> Although the term "reprisal" is often used in a broad sense to include all coercive measures, in its narrower sense it is used to describe an act ordinarily illegal but justified against a prior violation of international law.

### (d) Embargo, Pacific blockade and belligerent blockade

Traditional international law has recognized several different types of naval reprisals. Embargo is a special form in which vessels of the delinquent state are detained in the ports of the State that imposes the embargo. A blockade, in general, consists in the cutting off of a foreign port or coast by means of a naval operation. Two types of blockade are recognized in international law. A pacific blockade is the prevention of maritime communication with a foreign port by the use of force without technically destroying peaceful relations. It may be noted that the term is essentially a contradictory one, since a pacific blockade may be regarded as an act of war and, indeed, sometimes leads to war. Although in the past, pacific blockades have varied greatly in nature, they have generally been termed pacific if the blockading state does not intend the blockade as an act of war or if the blockaded state does not choose to regard it as such.

It has been observed, somewhat cynically, that pacific blockade has been utilized principally by the major powers who do not wish the inconvenience of war with smaller countries. Be that as it may, the pacific blockade has a long history in international law and is generally recognized as an effective means of hastening a settlement of international disputes without recourse to war.

It ought to be added that there is a wide diversity of opinion as to the effect of a pacific blockade upon the vessels of third nations. The weight of authority, however, seems to favor the view that a pacific blockade may not be enforced against the vessels of third nations.<sup>6</sup>

In contrast to the pacific blockade, a belligerent blockade is one carried on during a state of war. Although it is an unequivocally hostile measure of war against the enemy, its principal object is to cut off trade and communications rather than to destroy the port or induce a surrender by force. It is essentially a strategic pressure move having military and economic significance. The belligerent blockade may range from the de facto or simple blockade declared by a local commanding officer to the public or governmental blockade established by a formal act of state. As far as neutrals are concerned, the prerequisite elements of a belligerent blockade are knowledge, which may be accomplished either by public declaration or actual notification of vessels, and effectiveness of execution.<sup>7</sup> Enforcement methods have varied considerably: the vessel or its cargo (or both) may be forfeited, turned back, escorted out of the area to another

port or, under certain circumstances, sunk.

Apart from the basic distinctions in conception, motive and means of execution, it may be readily seen that the principal difference between the two types of blockade is to be found in the rights and duties of blockading states in relation to the ships of third states. Although the area is by no means completely settled, under customary international law, a pacific blockade is inapplicable to vessels of a third state. A belligerent blockade, on the other hand, would also apply to the ships of neutrals or other states.

(e) *Other related acts: Visit and search; maritime seizure and capture*

Closely allied to the concept and purpose of belligerent and pacific blockade are certain other measures that have been exercised by belligerents in wartime. Visit and search is the right of a belligerent to stop, visit, and search a vessel to learn whether it is connected with the hostilities. Under customary international law, the principal condition of a legal visitation and search is that it be executed with consideration and reasonableness. Generally, the vessel is ordered to stop or lie to, or is brought to. Innocent vessels must be allowed to proceed, but if there is cause for capture, the vessel is seized and sent to a prize court for adjudication.

Maritime seizure and capture of neutral private vessels during wartime may be justified on several grounds, including an attempt to break a blockade, or "if the vessel itself may be contraband or may be carrying contraband."<sup>8</sup> In such cases, the vessel is taken to the nearest home port for adjudication by a prize court.

Contraband in maritime law has been defined as consisting of neutral goods for use in war which have a belligerent destination. Absolute contraband consists of goods solely for use in war; conditional contraband includes goods which may be used either for war or peace. Under the law of contraband, neutral vessels carrying goods in violation of law or treaty are subject to seizure.

While the legality of these various rights and measures has always been the subject of dispute, it is significant to observe that they are firmly accepted in traditional international law as incidents of war. Furthermore, there is a trend which favors the application of these and other laws of war to an increasing variety of situations which, although hostile, do not constitute actual war. The Cuban quarantine, as one of the most severe measures yet initiated in the cold war, may indeed represent the latest evidence of this trend.

(f) *The quarantine of Cuba*

The foregoing discussion has demonstrated that customary international law on the subject of blockade and allied concepts is rather complex, if not inconsistent and unrealistic. Nevertheless, it may be seen readily that the Cuban quarantine partakes of the elements of both pacific and belligerent blockade. Although the language proclaiming the quarantine (and in particular the language prescribing the methods for its enforcement) is couched in terms of the belligerent blockade, the quarantine was not a belligerent blockade. It was neither intended as an act of war nor did it occur in wartime. Regardless of one's view of the cold war and its severity, it is impossible to agree with those who find the cold war the necessary prerequisite element of war. In any event, it may be pointed out that the blockaded country was not prepared to regard the quarantine as an act of war. While perhaps couched in the terms of a belligerent blockade, and while possessing some of its elements, particularly in relation to vessels of third nations, the quarantine was motivated throughout by a

pacifist intent, and fulfilled more closely the conditions of a pacific blockade.

Some have assailed the quarantine as a complete and drastic departure from traditional international law and a violation of the law of nations. As may be seen from an examination of the international legal structure, such is not the case. Looked upon as a whole, the quarantine is indeed a new form of reprisal. Upon closer scrutiny, however, it may be seen that each individual element of the quarantine has precedent in customary international law. There are no new elements as such in the quarantine; rather, it involved a novel combination of traditional elements. A study of its proclamation, the implementing orders of execution, its actual operation, motives, and all the surrounding circumstances, cannot but impress the student with the fact that the quarantine was actually carefully modeled to fit into the existing international legal pattern—to extend and adapt it to a new situation without impairing its fundamental precepts.

The flexibility and adaptability of international law, like any other area of law, is manifest in the continued evolution of older concepts to meet the exigencies of a rapidly advancing world. Just as pacific blockade was an outgrowth of older principles, the quarantine was a newer form of reprisal. As such, it has taken its place somewhere between the classic forms of belligerent and pacific blockade, although far closer to the pacific blockade.

Let us proceed to investigate the relation of the quarantine to the right of national and collective self-defense as reflected in conventional international law.

That relation must be examined in light of the prior acts of Cuba, the principles of self-defense, and the applicable hemispheric treaty obligations. The stark reality of the situation is set forth in the previously quoted words of President Kennedy. The speed of ballistic missiles and the destructive force of nuclear weapons set the stage for the problems that face nations in the 20th century. Could legal concepts such as those surrounding the notion of blockade, developed to cope with 19th century aspects of naval warfare, adequately meet the immediate problem that had to be solved?

IV. THE QUARANTINE UNDER CONVENTIONAL INTERNATIONAL LAW

The framework of conventional international law in which the legality of the Cuban quarantine must be investigated consists of the treaties and other international agreements to which the United States is a party, including the Charter of the United Nations and the various regional organizations authorized and recognized by that organ. It also includes other treaties to which the United States and Cuba are parties, together with the various declarations of individual and collective national intent.

(a) *Charter of the United Nations*

The Charter of the United Nations,<sup>9</sup> entered into as a binding treaty by the United States, is part of the law of the land. Article 1(1) of the charter sets forth the purposes of the United Nations as follows:

"To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."

Article 2(3) provides that "All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." This provision is not

an absolute restriction against the use of force. Although article 2(4) provides that "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations," the preamble of the charter expressly provides for the use of armed force "in the common interest."

Procedures for the pacific settlement of international disputes are set forth at length in the charter. Article 33(1), for instance, provides that "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." Article 35 provides that nations may bring the dispute to the attention of the Security Council or the General Assembly, and if this means fails, they are obliged by article 37 to refer the dispute to the Security Council.

It is interesting to note the various measures "not involving the use of armed force," that may be employed by the Security Council to enforce its decisions. Article 41 provides that "These may include complete or partial interruption of economical relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations." If these means prove inadequate, article 42 provides that the Security Council "may take such action by air, sea, or land forces, as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of members of the United Nations."

It may therefore be seen that blockade by the sea forces of a member nation is specifically provided for in the U.N. Charter as a measure of enforcement by the Security Council. This would indicate that the quarantine, as a means of enforcement, is not contrary to the spirit or terms of the charter.

In the course of events leading up to the Cuban quarantine, it is often forgotten that the United States did attempt to follow the procedures for pacific settlement outlined in article 33. These efforts culminated in the request by the United States for an emergency session of the Security Council on October 23, 1962. It is this final step, under the prescribed United Nations procedure, that has subjected the action of the United States to the charge of illegality. Admittedly, the quarantine was established by Presidential proclamation on October 23, and not by the Security Council. And by its terms, it went into effect the following day. Hence, it is further pointed out that the quarantine had already been announced when the United States sought to comply with article 37 in referring the dispute to the Security Council.<sup>10</sup>

Although the United States had sought at all stages to utilize the established U.N. procedure, its recourse to the Security Council chronologically came after the President's message announcing the quarantine. In addition, the subsequent effective proclamation was made by the United States, not the U.N. Security Council. Were these actions therefore violative of the U.N. Charter?

(b) *National self-defense*

The answer to the question is reasonably to be found in article 51 of the U.N. Charter. That article provides:

"Nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken

<sup>8</sup>Footnotes at end of speech.



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by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

It should be noted that the right of self-defense is an integral part of international law and is simply reflected and codified in article 51 of the charter. Its exercise, therefore, while legally conforming to the provisions of article 51 of the U.N. Charter, is not exclusively dependent upon that article for its authority. Clearly, under a construction that is meaningful and realistic in the present posture of nuclear weapons and ballistic missiles, one must conclude that the action of the United States was a lawful exercise of the basic and inherent right of national self-defense.

While cogent moral reasons lend support to the quarantine of Cuba, specifically it is article 51 of the U.N. Charter which refutes the charge of illegality. After a reading of article 51, the specific charge must center around the interpretation of the words "armed attack" in that article, since no "armed attack" had been launched against the United States. Can these words be reasonably interpreted to contemplate an actual, physical armed attack only? Such an interpretation would seem to be divorced from the grim realities of modern warfare and cannot possibly prevail in the 20th century. In an era of imminent and immediate mass destruction, literal adherence to the concept of actual armed attack is indeed a hollow argument. National self-defense, to retain any semblance of meaning and effectiveness must, because of modern armaments, be reasonably anticipatory in nature. This interpretation of armed attack, as including measures based upon reasonable anticipatory self-defense, is clearly consistent with the reality of the situation. It is not remiss to point out that it possesses the advantage of preserving the peace by not allowing aggressive conduct to grow unchecked and unchallenged.

(c) *Collective self-defense; regional agencies*

Within the framework of the U.N. Charter, the quarantine is not only a proper exercise of the right of national self-defense recognized by article 51, but is also consistent with the aims and ideals of the U.N. Its legality, however, also rests upon the precepts of collective self-defense as expressly recognized by the U.N. Charter. Article 52 (1) provides for the existence of "regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations."

Such a regional organization is the Organization of American States (OAS) which is recognized by the United Nations as coming within article 52(1) of the U.N. Charter. Like the Charter of the United Nations, the Charter of the OAS is a treaty which binds both Cuba and the United States. Indeed, the Charter of the OAS reflects the U.N. Charter to a considerable degree. Article 15 of the OAS Charter denies the right of intervention, and article 17 expresses the customary international law rule that the territory of a state is inviolable. Article 19, however, provides specifically that "Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in articles 15 and 17." The OAS Charter thus recognizes and implements other existing treaties, including the Inter-

American Treaty of Reciprocal Assistance; i.e., the Rio Treaty of 1947.

Chapter V of the OAS Charter summarizes, by a treaty provision, the inter-American system of collective self-defense. Article 24 of that charter provides:

"Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States."

Chapter V further provides in article 25:

"If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by an extra-continental conflict, or by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defense, shall apply the measures and procedures established in the special treaties on the subject."

These provisions include not only the procedures that had already been established in the Rio Treaty of 1947 and the declarations that had been in effect among the American States for at least 20 years prior to the OAS Charter, but also the later resolutions of Caracas and Punta del Este which brought the international Communist conspiracy within the ambit of article 25.

(d) *Collective self-defense; other treaties and declarations; the Rio Treaty of 1947*

The OAS Charter, signed in 1948, was the culmination of at least 20 years of agreements, declarations, and resolutions among the American States concerning their mutual and collective self-defense of the Western Hemisphere, many of which are legally binding obligations on the United States and Cuba. In the Declaration of Lima of 1938,<sup>12</sup> for instance, these states had expressed their "determination to make effective their solidarity" when "the peace, security, or territorial integrity of any American Republic is thus threatened by acts of any nature that may impair them."

Again, in the Declaration of Panama of 1939,<sup>13</sup> the American States asserted their rights of collective security and self-defense over large segments of the oceans surrounding North and South America.

In the act of Habana of 1940,<sup>14</sup> it was specifically provided that "any attempts on the part of a non-American State against the integrity or inviolability of the territory, the sovereignty or the political independence of an American State will be considered as an act of aggression against the states which signed this declaration."

A similar provision was contained in the act of Chapultepec of 1945.<sup>15</sup> This act further recommended the framing of a postwar treaty to deal with the problems of threats or acts of aggression against any American Republic and the provision of corrective measures, including the use of armed force to prevent or repel aggression. The act of Chapultepec eventually led to the signing of the Inter-American Treaty of Reciprocal Assistance of 1947—the Rio Treaty.<sup>16</sup>

The preamble of this treaty states that "the obligation of mutual assistance and common defense of the American Republics is essentially related to their democratic ideals and to their will to cooperate permanently in the fulfillment of the principles and purposes of a policy of peace."

The preamble further provides that the American States:

"Have resolved, in conformity with the objectives stated above, to conclude the following treaty, in order to assure peace, through adequate means, to provide for effective reciprocal assistance to meet armed attacks against any American State, and in

order to deal with threats of aggression against any of them."

The provisions of article 6 of the Rio Treaty are extremely significant. This article provides as follows:

"If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack or by an extracontinental or intracontinental conflict, or by any other fact or situation that might endanger the peace of America, the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defense and for the maintenance of the peace and security of the continent."

The similarity of this article to article 25 of the OAS Charter should be noted. Of particular importance is the fact that the concept of armed attack—the same as that of article 51 of the U.N. Charter—is here amplified and extended by definition to include "an aggression which is not an armed attack, an extracontinental or intracontinental conflict or any other fact or situation that might endanger the peace of America." This extension, as variously modified in both articles, indeed lends support to the more realistic interpretation of the same words in article 51 of the U.N. Charter.

The agreements and declarations of solidarity of the American States did not end with the Rio Treaty of 1947 or the Charter of the OAS in 1948. In Caracas, in 1954,<sup>17</sup> the 10th Inter-American Conference of American Republics condemned the Communist movement "as constituting intervention in American affairs," expressed "the determination of the American States to take the necessary measures to protect their political independence against the intervention of international communism, acting in the interests of an alien despotism," and declared that the "domination or control of the political institutions of any American State by the international Communist movement, extending to this hemisphere the political system of an extracontinental power, would constitute a threat to the sovereignty and political independence of the American States, endangering the peace of America, and would call for a meeting of consultation to consider the adoption of appropriate action in accordance with existing treaties."

Similarly, the foreign ministers of the American Republics met at Punta del Este, Uruguay, in January, 1962<sup>18</sup> to consider once again the threat of the spread of Communist ideals and conduct in Cuba. As a result, the Organ of Consultation of the OAS excluded the Communist Government of Cuba from the inter-American system, and resolved as follows:

"1. That adherence by any member of the Organization of American States to Marxism-Leninism is incompatible with the inter-American system and the alignment of such a government with the Communist bloc breaks the unity and solidarity of the hemisphere.

"2. That the present Government of Cuba, which has officially identified itself as a Marxist-Leninist government, is incompatible with the principles and objectives of the inter-American system.

"3. That this incompatibility excludes the present Government of Cuba from participation in the inter-American system.

"4. That the Council of the Organization of American States and the other organs and organizations of the inter-American system adopt without delay the measures necessary to carry out this resolution."

It was pursuant to article 25 of the OAS Charter and article 6 of the Rio Treaty that, on October 23, 1962, the Council of the Organization of American States met in its capacity as provisional consultative organ

Footnotes at end of speech.

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under the Rio Treaty at the request of the United States." The consultative organ, consisting of 20 American Republics, unanimously recommended that member states "take all measures, including the use of armed force" to dispel the threat to their mutual security, resolving:

"1. To call for the immediate dismantling and withdrawal from Cuba of all missiles and other weapons with any offensive capability;

"2. To recommend that the member states, in accordance with articles 6 and 8 of the Inter-American Treaty of Reciprocal Assistance, take all measures, individually and collectively, including the use of armed force, which they may deem necessary to insure that the Government of Cuba cannot continue to receive from the Sino-Soviet powers military material [sic] and related supplies which may threaten the peace and security of the continent and to prevent the missiles in Cuba with offensive capability from ever becoming an active threat to the peace and security of the continent."

This action was specifically in accordance with article 8 of the Rio Treaty, which provides that:

"For the purposes of this treaty, the measures on which the organ of consultation may agree will comprise one or more of the following: recall of chiefs of diplomatic missions; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications; and use of armed force."

In conjunction with articles 6 and 8, article 3 of the Rio Treaty contains an important expression of the relationship of the inherent right of self-defense of the U.N. Charter. The Congress, in its joint resolution adopted by the Senate on September 20, 1962,<sup>1</sup> recognized this fact, citing article 3 at length:

"Whereas in the Rio Treaty of 1947 the parties agreed that 'an armed attack by any State against an American State shall be considered as an attack against all the American States, and consequently, each one of the said contracting parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by article 51 of the Charter of the United Nations'."

The joint resolution of the Congress, after citing the Monroe Doctrine, article 3 of the Rio Treaty of 1947, and the Punta del Este resolution above, went on to say:

"Whereas the international Communist movement has increasingly extended into Cuba its political, economic, and military sphere of influence; Now, therefore, be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States is determined—

"(a) to prevent by whatever means may be necessary, including the use of arms, the Marxist-Leninist regime in Cuba from extending, by force or the threat of force, its aggressive or subversive activities to any part of this hemisphere;

"(b) to prevent in Cuba the creation or use of an externally supported military capability endangering the security of the United States; and

"(c) to work with the Organization of American States and with freedom-loving Cubans to support the aspirations of the Cuban people for self-determination."

#### V. CONCLUSION

With the joint resolution of Congress expressing the determination of the United States with respect to Cuba, we have run the full cycle of the legal background of President Kennedy's message of October 22 and proclamation of October 23, 1962. In branding the "urgent transformation of Cuba into an important strategic base by the presence

of . . . large, long-range, and clearly offensive weapons of sudden mass destruction" an "explicit threat to the peace and security of all the Americas," President Kennedy cited the Rio Treaty of 1947, the traditions of this Nation and hemisphere, the joint resolution of Congress, the Charter of the United Nations, and his own public warnings to the Soviets.

On which of these, then, was the legality of the Cuban quarantine ultimately based? First of all, the quarantine was a legitimate exercise of the inherent right of self-defense, a right recognized by article 51 of the U.N. Charter. Secondly, through the Organization of American States and pursuant to the provisions of the Rio Treaty of 1947, it was an exercise of the equally inherent right of collective self-defense, a right also recognized by article 51 of the U.N. Charter. Finally, it was justifiable on broader grounds, both legal and moral: That of the preservation and maintenance of international peace and security in accordance with the basic goals of international law and the ideals expressed in the U.N. Charter.

Scholars ought not to lose sight of the fact that the actions of Cuba and the Soviets were in themselves illegal under international law as a contravention, not only of the U.N. Charter, but as acts of interference, aggression and threats to the security of the Americans as this security had been expressed for at least 24 years in solemnly ratified treaties, declarations, and agreements. Any doubt as to the illegality of the Cuban acts against the American States was surely dispelled by the resolutions of Caracas and Punta del Este.

We have already examined the essential nature of the quarantine itself as a new measure in international law. In his choice of the procedural vehicle to be used to enforce and protect the rights of all the Americas, President Kennedy acted with a restraint that indicated a deep respect for the institutions, concepts, and traditions of international law and a desire to vindicate the U.N. and OAS Charters. In the final analysis, it may be argued that the reasonableness of the quarantine itself and its acceptance by the other nations of the world, its peaceful intent, and the ends it sought to accomplish are indeed eloquent testimony of its legality.

The world has recently witnessed a dramatic change from the 19th century concepts of naval warfare. Because of the striking power and almost incredible advances in the science of modern armaments, new means have had to be devised to meet present needs. It may truly be said that traditional international law was no longer capable of regulating nuclear warfare in the legal terms of the previous century. With the Cuban quarantine, we have seen the emergence of a new vital concept for the regulation of this modern warfare—one which has evolved naturally and organically from the traditional international law.

It has been wisely said that although the law must be stable, it cannot stand still. This being so, we are indeed privileged to witness, in this century, a new device of the international legal order whose application in the quarantine of Cuba helped to preserve our freedom and may in the future help to preserve our very civilization.

<sup>1</sup> Hackworth, Digest of International Law 1 (1940).

<sup>2</sup> Ibid.

<sup>3</sup> See 47 Department of State Bulletin 717 (Nov. 12, 1962); 57 Am. J. Int'l L. 612 (1963).

<sup>4</sup> Note on Retaliation, Retorsion and Reprisals in Orfield and Re, "Cases and Materials on International Law," 613 (1961).

<sup>5</sup> Ibid. See also "Note on Embargo and Pacific Blockade," Orfield and Re, op. cit. supra at 617. The act constituting the reprisal would ordinarily appear, therefore, to be illegal at first glance. If it fulfills the

requisites of a true reprisal, however, it becomes "legal"—as a reprisal.

<sup>6</sup> See, e.g., Wilson, "Handbook of International Law" 237-48, 379 (1939), and authorities cited therein. See also Jessup, "A Modern Law of Nations," 176 (1950); 2 Hyde, "International Law, Chiefly as Interpreted and Applied by the United States," 1669 (2d ed. 1945).

<sup>7</sup> The "effectiveness of execution" requirement was an outgrowth of the "paper blockades" of the 19th century in which one nation sought to blockade another simply by proclaiming the blockade to other nations.

<sup>8</sup> Contrast this language, that of the classic belligerent blockade and seizure with the Presidential interdiction of the Delivery of Offensive Weapons to Cuba, Proclamation No. 3504, 47 Department of State Bulletin No. 717 (Nov. 12, 1962).

<sup>9</sup> T.S. No. 993, U.N. DFI/16 10521—2 DM (1962).

<sup>10</sup> President Kennedy's message of Oct. 22 said that he had "directed that the following initial steps be taken immediately: First, a strict quarantine is being initiated." See 47 Department of State Bulletin No. 716 (Nov. 12, 1962). Immediately thereafter, the United States placed the Cuban situation before the U.N. Security Council and requested an urgent meeting of the Council. Id. at 723-724. The Council did not act on the Soviet resolution condemning the quarantine, but, by general consent, agreed to pursue a negotiated settlement through the Secretary General. On Oct. 23, the OAS organ of consultation met and recommended the use of "all measures, individually and collectively, including the use of armed force." Id. at 723. The formal proclamation of the President, citing this OAS resolution, then followed on Oct. 23, and went into effect the following way. This proclamation did not refer to either the United Nations or the Security Council action, presumably because, in the words of Secretary of State Rusk, it was necessary to act "without awaiting the outcome of the United Nations approach." Id. at 722. Referral of the matter to the Security Council by the United States may also be interpreted as a strict compliance with the reporting proviso of art. 51, infra.

<sup>11</sup> 2 U.S.T. and O.I.A. 2416 (1951).

<sup>12</sup> Hackworth, "Digest of International Law," 463, 464 (1943).

<sup>13</sup> See 34 Am. J. Int'l L. 17 (Supp. 1940).

<sup>14</sup> See 5 Hackworth, op. cit. supra, note 12, at 466 (1943).

<sup>15</sup> 60 Stat. 1831, 1837 (1945).

<sup>16</sup> 62 Stat. 1681 (1948).

<sup>17</sup> See 30 Department of State Bulletin No. 634, 638 (Apr. 26, 1954).

<sup>18</sup> See 46 Department of State Bulletin No. 278, 279 (Feb. 19, 1962).

<sup>19</sup> See 47 Department of State Bulletin No. 720-723 (Nov. 12, 1962).

<sup>20</sup> S.J. Res. 230, Sept. 20, 1962 (Senate); Sept. 26, 1962 (House of Representatives), (approved Oct. 3, 1962), 47 Department of State Bulletin No. 597 (Oct. 23, 1962).

<sup>21</sup> Thus, art. 51 of the U.N. Charter (which specifically includes "collective" self-defense within its terms) also operates as an exception to art. 53, which prohibits regional agencies from taking "enforcement action" without prior authorization of the Security Council.

#### Much Ado on Foreign Aid

#### EXTENSION OF REMARKS OF

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 19, 1964

Mr. BOB WILSON. Mr. Speaker, under leave to extend my remarks in the